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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sam Alich,

10 Plaintiff,

11 v.

12 Opendoor Technologies Incorporated, et al.,

13 Defendants.
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No. CV-22-01717-PHX-MTL

SCHEDULING ORDER

15
16 Pursuant to the Joint Case Management Report (Doc. 114),

17 The Court enters the following Scheduling Order to govern the litigation in this case:

- 18 1. Deadline for Joinder, Amending Pleadings, and Filing Supplemental
19 Pleadings.

20 The deadline for joining parties, filing a motion to amend the pleadings, and filing
21 supplemental pleadings is **July 14, 2025**.

- 22 2. Discovery Limitations.

23 a. Depositions shall be limited as provided by Rules 30 and 31 of the
24 Federal Rules of Civil Procedure. Notwithstanding any provisions of the Federal Rules of
25 Civil Procedure, non-party witnesses shall not be permitted to attend (either physically,
26 electronically, or otherwise) the deposition of any other witness in this case without an
27 order of this Court.

- 28 b. Each side may propound up to 25 interrogatories, including subparts,

1 30 requests for production of documents, including subparts, and 25 requests for
2 admissions, including subparts. The Federal Rules of Civil Procedure do not permit
3 “general” or “global” objections. The Court will therefore neither consider nor rule on
4 objections that are not specific to the individual interrogatory or request propounded.

5 c. If desired, a proposed Joint Stipulated Protective Order must be
6 lodged with the Court no later than **September 5, 2024**.

7 3. Fact Discovery.

8 The deadline for the completion of fact discovery, including discovery by subpoena,
9 shall be **July 14, 2025**. To ensure compliance with this deadline, the following rules shall
10 apply:

11 a. Depositions: All depositions shall be scheduled to start at least five
12 business days before the discovery deadline.

13 b. Written Discovery: The deadline for the substantial completion of
14 document production shall be **April 11, 2025**. All interrogatories, requests for production
15 of documents, and requests for admissions shall be served at least 45 days before the
16 document production deadline.

17 c. Notwithstanding Local Rule of Civil Procedure 7.3, the parties may
18 mutually agree in writing, without Court approval, to extend the time provided for
19 discovery responses in Rules 33, 34, and 36 of the Federal Rules of Civil Procedure. Such
20 agreed-upon extensions, however, shall not alter or extend the deadlines set forth in this
21 Order.
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23 4. Expert Disclosure and Discovery.

24 a. The party with the burden of proof on an issue shall provide full and
25 complete expert disclosures, as required by Rule 26(a)(2)(A)-(C) of the Federal Rules of
26 Civil Procedure, no later than **August 11, 2025**.

27 b. The responding party (not having the burden of proof on the issue)
28 shall provide full and complete expert disclosures, as required by Rule 26(a)(2)(A)-(C) of

1 the Federal Rules of Civil Procedure, no later than **September 22, 2025**.

2 c. The party with the burden of proof on the issue shall make its rebuttal
3 expert disclosures, if any, no later than **October 27, 2025**. Rebuttal experts shall be limited
4 to responding to opinions stated by the opposing party's experts.

5 d. Disclosures under Rule 26(a)(2)(A) must include the identities of
6 treating physicians and other witnesses who will provide testimony under Federal Rules of
7 Evidence 702, 703, or 705, but who are not required to provide expert reports under
8 Rule 26(a)(2)(B). Rule 26(a)(2)(C) disclosures are required for such witnesses on the
9 disclosure deadlines set forth above. Rule 26(a)(2)(C) disclosures must identify not only
10 the subjects on which the witness will testify, but must also provide a summary of the facts
11 and opinions to which the witness will testify. The summary must be sufficiently detailed
12 to provide fair notice of what the witness will say at trial.¹

13 e. No depositions of any expert witnesses shall occur before the
14 aforementioned disclosures concerning expert witnesses are made.

15 f. Expert depositions shall be completed no later than
16 **December 8, 2025**. As with fact witness depositions, expert depositions shall be scheduled
17 to commence at least five calendar days before the deadline.

18 g. As stated in the Advisory Committee Notes to Rule 26 of the Federal
19 Rules of Civil Procedure (1993 amendment), expert reports under Rule 26(a)(2)(B) must
20 set forth "the testimony the witness is expected to present during direct examination,
21 together with the reasons therefor." Full and complete disclosures of such testimony are
22 required on the dates set forth above. Absent extraordinary circumstances, parties will not
23 be permitted to supplement expert reports after these dates. The Court notes, however, that
24 it may permit parties to present opinions of their experts that were elicited by opposing
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26 ¹ In *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817 (9th Cir. 2011), the
27 Ninth Circuit held that "a treating physician is only exempt from Rule 26(a)(2)(B)'s written
28 report requirement to the extent that his opinions were formed during the course of
treatment." *Id.* at 826. Thus, for opinions formed outside the course of treatment, Rule
26(a)(2)(B) written reports are required. *Id.* For opinions formed during the course of
treatment, Rule 26(a)(2)(C) disclosures will suffice.

1 counsel during depositions of the experts. Counsel should depose experts with this fact in
2 mind.

3 h. Each side shall be limited to one retained or specifically employed
4 expert witness per issue.

5 5. Class Certification.

6 The deadline to file a motion for class certification is **January 4, 2025**. The deadline
7 for Defendants to file an opposition to the class certification is **February 22, 2025**. The
8 deadline for Plaintiffs to file a reply in support of their motion for class certification is
9 **March 25, 2025**.

10 6. Discovery Disputes.

11 a. Except as otherwise specified in this Paragraph 5, motions to compel
12 discovery shall be governed by Rule 37 of the Federal Rules of Civil Procedure and Local
13 Rule of Civil Procedure 37.1. In the course of written discovery, if a discovery dispute
14 arises and cannot be resolved despite sincere efforts to resolve the matter through personal
15 consultation (in person or by telephone), the parties shall jointly file (1) a joint motion
16 containing a written summary of the dispute, not to exceed three pages of argument
17 (excluding exhibits, which should include the discovery requests and responses/objections
18 at issue and may include attorney correspondence), with explanation of the position taken
19 by each party, and (2) a joint written certification that counsel or the parties have attempted
20 to resolve the matter through personal consultation and sincere efforts as required by Local
21 Rule of Civil Procedure 7.2(j). If the opposing party has refused to personally consult, the
22 party seeking relief shall describe the efforts made to obtain personal consultation. Upon
23 review of the joint motion, the Court may set a telephonic conference or in-person
24 proceeding, order supplemental briefing, or decide the dispute by relying on the joint
25 motion.
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27 b. If a discovery dispute arises in the course of a deposition and requires
28 an immediate ruling of the Court, the parties shall jointly telephone the Court to request a

1 telephone conference regarding the dispute.

2 c. Absent extraordinary circumstances, the Court will not entertain fact
3 discovery disputes after the deadline for completion of fact discovery, and will not entertain
4 expert discovery disputes after the deadline for completion of expert discovery. Delay in
5 presenting discovery disputes for resolution is not a basis for extending discovery
6 deadlines.

7 d. The parties are strongly encouraged to resolve discovery disputes
8 mutually and without expending judicial resources. To that end, and under the appropriate
9 circumstances, the Court will give serious consideration to the payment of expenses as
10 provided for in Rule 37(a)(5) of the Federal Rules of Civil Procedure.

11 7. Dispositive Motions.

12 a. Dispositive motions and motions challenging expert opinion
13 testimony shall be filed no later than **January 5, 2026**. Opposition to dispositive motions
14 shall be filed no later than **March 2, 2026**. Replies in support of dispositive motions shall
15 be filed no later than **April 2, 2026**.

16 b. No party or parties represented by at least one of the same counsel
17 shall file more than one motion for summary judgment under Rule 56 of the Federal Rules
18 of Civil Procedure without leave of the Court.

19 c. Local Rule of Civil Procedure 56.1 is suspended, except for
20 subsection (d). The Court will decide summary judgment motions under Federal Rule of
21 Civil Procedure 56 only. The parties may not file separate statements of facts or separate
22 controverting statements of facts, but instead must include all facts in the motion, response,
23 or reply itself. All evidence to support a motion or response must be attached to the motion
24 or response. The evidence may include only relevant excerpts rather than full documents.
25 No new evidence may be submitted with a reply. A reply may cite only evidence attached
26 to the motion or response. No party shall presume that the Court will scour the record for
27 facts or theories that might support either party's case. *See Claar v. Burlington N. R.R. Co.*,
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1 29 F.3d 499, 504 (9th Cir. 1994). The Court will rely solely upon the attached evidence to
2 verify facts asserted in the motion, response, or reply. Each citation to evidence to support
3 a fact must include a pin citation to at least one page that proves that fact. Because no
4 separate controverting statement of facts will be permitted, the responding party must
5 carefully address all material facts raised in the motion. Likewise, the reply must carefully
6 address all material facts raised in the response. Any fact that is not addressed may be
7 deemed by the Court to be uncontested.

8 d. Organizationally, immediately following the document containing the
9 motion and supporting memorandum, the moving party shall attach a numerical table of
10 contents. Each piece of evidence listed in the table of contents shall be attached to the table
11 of contents in numerical order. Immediately following the document containing the
12 response and supporting memorandum, the responding party shall attach an alphabetical
13 table of contents. Each piece of evidence listed in the table of contents shall be attached to
14 the table of contents in alphabetical order. By way of example, citations to exhibits attached
15 to the motion would be “(Ex. 1 at 7)” and citations to exhibits attached to the response
16 would be “(Ex. D at 3).”

17 e. A party desiring oral argument shall place the words “Oral Argument
18 Requested” immediately below the title of the motion pursuant to Local Rule of Civil
19 Procedure 7.2(f). Where oral argument does not aid the Court’s decision, the Court may
20 decline the request and decide the motion without holding oral argument. If the request is
21 granted, the Court will issue a minute entry informing the parties of the argument date and
22 time. The minute entry may specify particular issues that the Court deems worthy of
23 attention.
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25 8. Motions for Attorneys’ Fees.

26 All motions for an award of attorneys’ fees shall be accompanied by an electronic
27 Microsoft Excel spreadsheet, to be emailed to the Court and opposing counsel, containing
28 an itemized statement of legal services with all information required by Local Rule

54.2(e)(1). This spreadsheet shall be organized with rows and columns and shall automatically total the amount of fees requested to enable the Court to efficiently review and recompute, if needed, the total amount of any award after disallowing any individual billing entries. This spreadsheet does not relieve the moving party of its burden under Local Rule 54.2(d) to attach all necessary supporting documentation to its motion. A party opposing a motion for attorneys' fees shall email to the Court and opposing counsel a copy of the moving party's spreadsheet, adding any objections to each contested billing entry (next to each row, in an additional column) to enable the Court to efficiently review the objections. This spreadsheet does not relieve the non-moving party of the requirements of Local Rule 54.2(f) concerning its responsive memorandum.

9. Good Faith Settlement Talks.

All parties and their counsel shall meet in person and engage in good faith settlement talks no later than **March 10, 2025**. Upon completion of such settlement talks, and in no event later than five working days after the deadline set forth in the preceding sentence, the parties shall file with the Court a joint report on settlement talks executed by or on behalf of all counsel. The report shall inform the Court that good faith settlement talks have been held and shall report on the outcome of such talks. The parties shall indicate whether assistance from the Court is needed in further settlement efforts. The Court will set a settlement conference before a Magistrate Judge upon request of all parties. The parties shall promptly notify the Court if settlement is reached.

10. Joint Mediation Plan.

Counsel shall meet and confer and submit a joint mediation plan that identifies: (1) whether the parties wish to pursue private mediation or request a settlement conference before a Magistrate Judge; (2) when they plan to schedule their mediation or settlement conference to occur; and (3) any other information the parties believe that Court should be made aware. The joint mediation plan shall be filed with the Court no later than **January 10, 2025**. If the parties elect private mediation, but cannot agree on a mediator,

1 each party shall identify no more than three mediators in the joint report and attach helpful
2 background information. The Court will then select from the names submitted.

3 11. Briefing Requirements.

4 a. All memoranda filed with the Court shall comply with Local Rule of
5 Civil Procedure 7.1(b) requiring text no smaller than 13 point font in text and footnotes for
6 proportional font sizes, and no smaller than 10 pitch in text and footnotes for fixed-pitch
7 type sizes.

8 b. Citations in support of any assertion in the text shall be included in
9 the text, not in footnotes.

10 c. A party moving for an extension of time, enlargement of page
11 limitations, leave to amend, or leave to file a document under seal shall indicate in the
12 motion whether the non-movant opposes the request and intends to file a written response.
13 If the non-movant has refused to provide a position on the request, the moving party shall
14 describe the efforts made to consult.

15 12. Pre-motion Conference.

16 If the parties or the Court believe it may be assistive, the Court may hold a
17 conference with the parties before motions for summary judgment are filed. The purpose
18 of the conference would be to narrow issues and focus the briefing. In those cases, the
19 parties shall exchange two-page letters describing any anticipated motions for summary
20 judgment and responses, identifying the issues and claims on which summary judgment
21 will be sought, and the basis for the motions and response. The deadline for the parties to
22 file these letters with the Court shall be 60 days prior to the dispositive motion deadline.
23 Once filed, the parties shall call the Court the same day to schedule a time for a pre-motion
24 Conference.
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1 13. Deadline for Notice of Readiness for Final Pretrial Conference.

2 The Plaintiff(s) shall notify the Court that the parties are ready for scheduling a Final
3 Pretrial Conference pursuant to Rule 16(e) of the Federal Rules of Civil Procedure. The
4 Plaintiff(s) shall file and serve this notice within seven days after the dispositive motion
5 deadline if no dispositive motions are pending on that date. If dispositive motions are
6 pending, Plaintiff(s) shall file and serve such notice within seven days after the resolution
7 of the dispositive motions. The Court will then issue an Order Setting Final Pretrial
8 Conference.

9 14. The Deadlines Are Real.

10 The Court will, absent a showing of good cause, enforce the deadlines set forth in
11 this Order, and the parties should plan their litigation activities accordingly. If the parties
12 wish to file an extension request, the parties should include in their motion or stipulation
13 (1) what they have done to date; (2) why the extension is necessary; and (3) any other
14 information that may be helpful for the Court. Failure to meet any of the deadlines in this
15 Order or in the Federal or Local Rules of Civil Procedure without substantial justification
16 may result in sanctions, including dismissal of the action or entry of default.

17 15. Requirement for Paper Courtesy Copies.

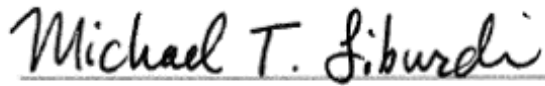
18 A paper courtesy copy of dispositive motions and any responses or replies thereto
19 shall be either postmarked and mailed to the Judge or hand-delivered *to the Judge's*
20 *mailbox* located in the Clerk's office by the next business day after the electronic filing.
21 Please do not attempt to deliver documents to the Judge's chambers. A copy of the face
22 page of the Notice of Electronic Filing shall be appended to the last page of the courtesy
23 copy. Courtesy copies of documents too large for stapling must be bound with a metal
24 prong fastener at the top center of the document or submitted in three-ring binders.

25 16. Court Hearings Are In Person.

26 Unless otherwise indicated by Court order, counsel are expected to attend court
27 hearings in person. The Court may grant a motion for leave to appear telephonically. A
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1 motion for leave to appear telephonically must be filed at least 7 days before a hearing and
2 indicate the position of all other parties. Counsel are advised that convenience and cost
3 savings typically are not considered good cause for granting leave.

4 Dated this 5th day of September, 2024.

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8 Michael T. Liburdi
9 United States District Judge
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